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**COUNTY COUNCIL**  
COUNTY OF MAUI  
200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
[www.mauicounty.gov/council](http://www.mauicounty.gov/council)

November 9, 2011

The Honorable Danny A. Mateo, Chair  
and Members of the Council  
County of Maui  
Wailuku, Hawaii 96793

RECEIVED  
2011 NOV 10 AM 8:53  
OFFICE OF THE  
COUNTY CLERK

Dear Chair Mateo and Members:

**SUBJECT: AMENDMENT TO CHAPTER 14.12 RELATING TO  
WATER AVAILABILITY**

Please find attached a draft bill entitled "A BILL FOR AN ORDINANCE AMENDING ARTICLE 1 OF TITLE 14, MAUI COUNTY CODE, AND TITLE 18 MAUI COUNTY CODE, RELATING TO WATER AVAILABILITY".

May I please request that the draft bill be referred to the appropriate standing committee for discussion and action.

Thank you for your consideration. Should you have any questions or require clarification, please contact me.

Sincerely,

Handwritten signature of Michael P. Victorino in black ink.

MICHAEL P. VICTORINO  
Council Member

MPV: cmy

Attachment

**COUNTY COMMUNICATION NO. 11-306**

ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_ ( )

A BILL FOR AN ORDINANCE AMENDING ARTICLE I OF TITLE 14, MAUI COUNTY CODE, AND TITLE 18, MAUI COUNTY CODE, RELATING TO WATER AVAILABILITY

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Section 14.01.040, Maui County Code, is amended adding new definitions to be appropriately inserted and read as follows:

“Applicant” means any person who causes, or applies to cause, land to be divided into a subdivision.

“**[Approved] Accepted** engineering report” means a report prepared by a licensed professional engineer, experienced in such fields as water resources, hydrogeology, water supply, or environmental engineering, and **[approved] accepted** by the director of the state department of health pursuant to department of health rules, for non-County water service.

“Construction” means any work associated with development of a new water source.

“Cumulative impact” means the impact on the environment and water supply that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

“Department of health” means the State of Hawaii department of health.

“Department of health rules” means Hawaii Administrative Rules, title 11, chapter 20, entitled “Rules Relating to Potable Water Systems.”

“Groundwater” means any water found beneath the surface, whether in perched supply, dike confined, flowing or percolating in underground channels or streams, under artesian pressure or not, or otherwise.

“Long-term, reliable supply of water” means: (A) a County water meter reservation, as established by a receipt for payment of a County water meter reservation verifying that the proposed subdivision will be provided source and service; or (B) the total water supplies from a private, non-County source that will meet the projected demand associated with a proposed development, in addition to existing and planned future demand, as established by an **[approved] accepted** engineering report.

“Potable water” means water that has been certified by the department of health as suitable for cooking or drinking purposes.

“Subdivision” means improved or unimproved land or lands divided into two or more lots, parcels, sites, or other divisions of land for the purpose, whether immediate or future, of sale, lease, rental, transfer of title to or interest in, any or all such parcels. Except as otherwise permitted by law, for purposes of this article, a development consisting of four or more dwelling units on a lot, parcel or site, including planned unit developments and condominiums reviewed, approved and established pursuant to Hawaii Revised Statutes, shall be deemed a subdivision.

“Surface water” means both contained surface water, that is, water upon the surface of the earth in bounds created naturally or artificially, including, but not limited to, streams, other watercourses, lakes, reservoirs, and coastal waters subject to state jurisdiction, and diffused surface water, that is, water occurring upon the surface of the ground other than in contained water bodies. Water from natural springs is surface water when it exits from the spring onto the earth’s surface.

“Sustainable yield” means the maximum rate at which water may be withdrawn from a water source without impairing the utility or quality of the water source, as determined by the commission, and set forth in the plan.

“Traditional and customary native Hawaiian rights and practices” means the rights of ahupuaa tenants who are descendents of native Hawaiians who inhabited the Hawaiian islands prior to 1778, including the cultivation or propagation of taro on one’s own kuleana and the gathering of hihiwai, opae, oopu, limu, thatch, ti leaf, aho cord, and medicinal plants for subsistence, cultural, and religious purposes, as set forth in article XII, section 7 of the Hawaii State Constitution, and section 174C-101, Hawaii Revised Statutes.”

SECTION 2. Title 14, Maui County Code, is amended by adding a new chapter

to be appropriately designated and to read as follows:

### **“Chapter 14.12**

### **WATER AVAILABILITY**

Sections:

- |           |  |
|-----------|--|
| 14.12.010 | Title and purpose.   |
| 14.12.020 | Applicability and scope.                                     |
| 14.12.030 | Exemptions   |
| 14.12.040 | Written verification of long-term, reliable supply of water. |
| 14.12.050 | Director’s comments on engineering reports.                  |
| 14.12.060 | Expiration.  |

**14.12.010 Title and purpose.** This chapter shall be known as the County's "water availability policy". The Council acknowledges and affirms that water is a natural and cultural resource that must be protected, preserved, and managed as a public trust, and hereby establishes a policy that requires verification of a long-term, reliable supply of water before applicable subdivisions are approved. Nothing in this chapter shall lessen the department's responsibility to develop adequate future water sources and water infrastructure consistent with the County's water use and development plans.

**14.12.020 Applicability and scope.** This chapter shall apply to all subdivisions, including subdivisions bonded pursuant to sections 18.20.190, 18.20.200, and 18.20.210 of this code, [and to water source development agreements with private clients as defined in section 14.03.025 of this code,] unless exempted under section 14.12.030.

**14.12.030 Exemptions.** This chapter shall not apply to:

A. Building Permits as described in chapter 18.28 of this code, or other ministerial construction permits that do not require new or additional water services;

B. Subdivisions that do not require water service, such as, but not limited to, large lot subdivision as defined in section 18.16.270 of this code, family subdivisions as defined in section 18.20.280 of this code, consolidations and concurrent re-subdivisions that do not create additional developable lots, road widening lots, utility lots, or easements for access or utility purposes;

C. Subdivisions that will not be regulated as a public water system pursuant to department of health rules, provided that this exemption shall not apply to any subsequent subdivision of any of the resulting parcels;

D. Infill development that for the purposes of this chapter is defined as development of ten residential dwelling units or less on [contiguous] vacant parcels within areas [that are already developed,] consistent with applicable zoning designations and the general plan, and within the service area of the department's central or west Maui water system;

E. Residential workforce housing units developed by a qualified housing provider pursuant to chapter 2.96 of this code, and are within the service area of the department's central or west Maui water system;

F. Residential development projects with one hundred percent affordable housing units and are within the service area of the department's central or west Maui water system; or

G. Public or quasi-public development projects as defined in section 19.04.040 of this code, and related subdivisions, and are within the service area of the department's central or west Maui water system.

**14.12.040 Written verification of long-term, reliable supply of water.**

A. No applicable subdivision shall be approved, unless [prior to submittal of subdivision construction plans pursuant to section 18.20.160 of

this code,] the director [shall provide] has provided written verification of either (a) a Country water meter or water meter reservation or (b) the receipt of an accepted engineering report for a long-term, reliable supply of water for said subdivision.

B. Written verification of a long-term, reliable supply of water shall not constitute an assurance, covenant, or warranty by the County of water source from a private, non-County system.

**14.12.050 Director's comments on engineering reports.** The director shall review and comment on engineering reports during the department of health's inter-agency review period. In reviewing and commenting on an engineering report, the director may [shall] consider all of the following factors:

A. The cumulative impacts;  
B. The commission's water resources protection plan;  
C. The plan;  
D. The general plan and relevant community plans;  
E. The adverse impacts on surrounding aquifers and stream systems,  
including:

1. Water levels;
2. Water quality, including salinity levels;
3. The discharge of water into springs and nearshore marine areas;
4. Surface water-groundwater interactions; and
5. Adverse impacts on other existing, future, or planned wells.

F. The adverse impacts on Department of Hawaiian Home Lands' current reservations or projected future uses;

G. The adverse impacts on the water needs of residents currently being served and projected to be served by the department;

H. The adverse impacts on environmental resources that are rare or unique to the region and the project site (including natural, cultural, or human-made resources of historic, archaeological, or aesthetic significance);

I. The adverse impacts on the exercise of traditional and customary Native Hawaiian rights and practices;

J. United States Geological survey studies;

K. Whether the applicant is in full compliance with the State water code and County's water reporting laws;

L. Whether the affected water source, including groundwater, surface water, or other source of water will exceed:

1. Ninety percent of the sustainable yield;
2. Instream flow standards; or
3. Interim instream flow standards;

M. The adverse impacts to the water needs of residents currently on a County "wait list" for water meters;

N. The allocation of water set forth in this code; and

O. The adverse impacts to the water quality of any water body identified as impaired under section 303(d) of the Clean Water Act.

**14.12.060 Expiration.** A. Written verification of a long-term reliable supply of water shall expire, and be deemed null and void, unless extended by the director for good cause or as part of a water source development agreement, if:

1. For groundwater source, the director has not received a well completion report from the commission within two years from the date of verification; provided that, the director may, for good cause, authorize up to two time extensions of up to six months each; and further provided that, any request for an extension of time shall be received by the director at least thirty days before the associated expiration date.

2. For surface water source, the director has not received a written approval for use from the department of health within two years from the date of verification; provided that, the director may, for good cause, authorize up to two time extensions of up to six months each; and provided further that, any request for an extension of time shall be received by the director at least thirty days before the associated expiration date; or

3. For County water meter reservation, if the water meters covered under the reservation have not been installed in accordance with the terms, conditions, provisions, and time limitations of the meter reservation policies of the department.

B. If written verification of a long-term, reliable supply of water expires, a new, updated verification pursuant to section 14.12.040 must be issued before construction can resume.”

SECTION 3. Material to be repealed and bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 4. This ordinance shall take effect upon its approval. Chapter 14.12 shall expire two years after the effective date of this ordinance.

APPROVED AS TO FORM  
AND LEGALITY:

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EDWARD S. KUSHI, JR.  
Deputy Corporation Counsel  
County of Maui